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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

H021614

(Santa Cruz County

Super.Ct.No. S7-09553)

GUILLERMINA FARIAS SANTOS,

Defendant and Appellant.

_____ /

Guillermina Farias Santos was convicted of misdemeanor welfare fraud. (Welf. & Inst. Code, § 10980, subd. (c)(2).) On appeal, she argues (1) she was denied her right to a speedy trial under the California Constitution; and (2) she was denied her right to a speedy trial under the United States Constitution and her trial counsel's failure to assert that federal right constituted ineffective assistance. We will affirm.

Facts and Procedural Background

On August 11, 1997, a criminal complaint was filed, charging appellant with perjury and welfare fraud. An August 28, 1997 arraignment date was set. There is no evidence that appellant received any notice of the arraignment. Appellant did not appear at the arraignment.

On September 3, 1997, a warrant for appellant's arrest was issued. Law enforcement did not make any attempts to serve the warrant. There is no evidence in the record of any justification for not serving the warrant.

From 1997 until February 2000, appellant resided in Watsonville, California. Appellant interacted with numerous government agencies during that time, including the Department of Motor Vehicles, the Immigration Court, the Human Resources Agency of Santa Cruz County, the District Attorney's Office, and the Welfare Department.

At the end of January 2000, appellant became aware of the charges against her when she went to request Medi-Cal. Appellant was told that she did not qualify for Medi-Cal because there was a warrant for her arrest based upon some assistance she received in 1996.

On February 7, 2000, appellant turned herself in to the Watsonville Police Department on the outstanding warrant. On February 24, 2000, appellant was arraigned on the complaint that was issued two and one half years before.

On March 3, 2000, a preliminary hearing was held. Olga Burke, a welfare fraud investigator, was the only witness to testify at the preliminary hearing.

Burke testified that appellant received welfare payments for the months of July through August 1996 to which she was not entitled.

Burke testified that Ms. Yamashita, an Eligibility Review Worker III, informed her that appellant received AFDC and food stamp overpayments for the period July 1996 through October 1996. The parties stipulated that the amount was \$1721. Burke testified that Ms. Ramos, an eligibility worker, told her that appellant signed forms when she applied for aid that explained appellant's reporting responsibilities and also explained what type of conduct constituted fraud. Burke testified that Anthony Correra, an eligibility worker, told her that in March 1996 appellant completed and signed a child support questionnaire and a document regarding the continued absence of a parent from the home.

Burke testified that the duties of Velma Biddlecome, an eligibility worker, were to process monthly income reports on which recipients were required to report "any changes in the household regarding income, absent father, household composition, resources, assets, retirement, pension, et cetera." Appellant did not report that her husband resided with her during the period June 1996 through August 1996.

Burke testified that Linda Niizawn, custodian of records for Dutra Farms, said that appellant and her husband were employed there in 1996, June through September and June through October, respectively.

Burke contacted appellant's husband, Farias, in March 1997. He admitted that he lived with appellant from July through October 1996 except for one or two weeks when he went to Mexico and for several days when he became angry and left. Appellant's husband signed a declaration to this effect. Burke kept no notes of that interview.

Burke explained that appellant had not reported to the welfare department her husband's presence in their home, her husband's income and also had not reported her own income.

Burke testified that Juan Diaz, appellant's landlord, said that appellant and her husband lived together in the room he rented to them from July 1996 through October 1996.

Burke testified that Ascencion Martinez, a neighbor, said that appellant and her husband were living together during the relevant period. Burke testified that she spoke with appellant, who admitted that she had not reported her husband's presence in the home to the welfare department because "the absent father . . . never gave her any money[]" and also admitted that she had not reported her own income.

On April 24, 2000, appellant filed a motion to dismiss alleging her state constitutional right to a speedy trial had been violated. On May 3, 2000 the district attorney filed opposition.

At the hearing on the motion to dismiss, the following evidence was adduced. The sheriff's department received the warrant for appellant's arrest on September 3, 1997. Their records showed no address for appellant and no vehicles registered to her. No attempt to physically serve the warrant was made.

Appellant's counsel filed a declaration stating that she contacted the Arizona Department of Corrections to locate appellant's husband.

Appellant testified. She gave her current address in Watsonville, where she said she had lived since 1997, and where, in January 1999, she said she had received a welfare payment. Appellant explained that in January 2000, she applied for Medi-Cal. At that time, she was informed that she was ineligible because there was a warrant for her arrest, and she surrendered herself.

Appellant testified that she met Olga Burke, a county welfare worker in 1997, but did not recall what they spoke about.

Appellant testified that she did not know, at the time she testified, of her husband's whereabouts and did not know how to contact him. She had contact with him in January 1999 when she injured her leg, and again when their child was injured "but that was the last time."

Appellant testified that between 1997 and 1999, she contacted the District Attorney's Office for help with child support.

Appellant testified that she did not know when her husband stayed with her and did not know where he stayed when he was not with her. Appellant testified "I only remember that we were having problems so we separated because he wasn't helping me with the rent money for the girls." She testified that while there were people who could have testified that her husband did not reside with her, she did not know where they lived today. She knew that one worked at a particular ranch, but did not know, as of the date of her testimony, whether he still worked there. Appellant did not know or approve of her husband's friends, and did not know how to contact them.

At the hearing, the trial court stated that it thought "this case will either stand or fall based on the so-called husband's availability, and I do not find that there is -- both sides in this case need to have that testimony to go forward with this. At least that's my understanding at this point, that it would be improper to grant the motion at this time, so I'm going to deny the motion for speedy trial at this time."

On June 8, 2000, the trial court granted the district attorney's motion to dismiss the perjury charge and to reduce the welfare fraud charge to a misdemeanor.

Appellant waived her right to a jury trial and submitted the issue of her guilt on the preliminary hearing transcript.

The trial court found appellant guilty and placed her on probation. This appeal ensued.

Discussion

A. California Constitutional Right To Speedy Trial

Appellant argues that her right to a speedy trial under the California Constitution was violated. We disagree.

Under the California Constitution, "[t]he defendant in a criminal cause has the right to a speedy public trial. . . ." (Cal. Const. art. I, § 15, cl. 1.) The filing of a felony complaint will trigger the speedy trial protection.

In California, "a defendant charged with a felony may predicate a claimed speedy trial violation on delay occurring after the filing of the complaint and before the defendant was held to answer the charge in superior court. In this situation, when the claimed speedy trial violation is not also a violation of any statutory speedy trial provision, this court has generally required the defendant to affirmatively demonstrate that the delay has prejudiced the ability to defend against the charge. [Citation.] In particular, we have held that when a defendant seeks dismissal based on delay after the filing of the complaint and before indictment or holding to answer on felony charges, a court must weigh 'the prejudicial effect of the delay on defendant against any justification for the delay.' [Citation.] No presumption of prejudice arises from delay after the filing of the complaint and before arrest or formal accusation by indictment or information [citation]; rather, the defendant seeking dismissal must affirmatively demonstrate prejudice." (*People v. Martinez* (2000) 22 Cal.4th 750, 766-767.)

In this case, appellant argues that her husband's absence, given that he was a material witness, constituted actual prejudice. She also states that she could not effectively cross-examine Burke due to Burke's faded memory. Specifically, appellant notes that Burke could not recall whether she had asked appellant's husband, or whether he had told her, where he would reside when he became angry and left appellant. Appellant also states that Burke could not recall if appellant's husband told her whether he gave appellant any money while he was living with her. Appellant also states that her own memory had faded, and that she could not recall when her husband stayed with her during the time period in question. Finally, appellant notes that she was unable to locate other witnesses whose testimony could have been beneficial to her.

Assuming, without deciding, that all of appellant's claimed prejudice did exist, it still does not assist her. This is because the claimed prejudice goes only to one basis of appellant's conviction, which was failing to report her husband's presence and employment. What appellant overlooks, and wholly fails to address, is that appellant was also convicted of misdemeanor welfare fraud based upon her failure to report *her own income*. Appellant's claimed prejudice all relates to the failing to report her husband's presence and his income, does not relate to her failure to report her own income, and appellant has made no claim of any prejudice relating to her failure to report her own income. Appellant does not argue that the delay prejudiced her with respect to the allegation that she failed to report her own income. Thus, appellant cannot establish that the delay affected her ability to defend such that a different result might have occurred absent the delay because even if she were prejudiced as to the allegations relating to her husband, there was another basis for her conviction for which she has shown no prejudice. For this reason, appellant's contention that her conviction should be reversed for violation of her California Constitution speedy trial rights is without merit.

B. Federal Speedy Trial Right

Appellant argues that she was denied her right to a speedy trial under the federal Constitution and that her counsel's failure to assert the federal right constituted ineffective assistance of counsel. We disagree.

In considering a claim that trial counsel was ineffective, the California Supreme Court has stated that the following principles apply: "To prevail on a claim of ineffective assistance of counsel, defendant 'must establish not only deficient performance, i.e., representation below an objective standard of reasonableness, but also resultant prejudice. [Citation.] Tactical errors are generally not deemed reversible; and counsel's decision-making must be evaluated in the context of the available facts. [Citation.] To the extent the record on appeal fails to disclose why counsel acted or failed to act in the manner challenged, we will affirm the judgment "unless counsel was asked for an explanation and failed to provide one, or unless there simply could be no satisfactory explanation. . . ." [Citation.] Finally, prejudice must be affirmatively proved; the record must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." [Citations.]' " (*People v. Hart* (1999) 20 Cal.4th 546, 623-624.)

In this case, appellant cannot show prejudice because of the holding in *People v. Martinez*, *supra*, 22 Cal.4th 750. *Martinez* held that the Sixth Amendment's speedy trial right does not attach in felony prosecutions upon the filing of the complaint, as was the situation in appellant's case, but only upon formal indictment, information, or actual restraint. Although appellant argues that *Martinez* was erroneously decided, we are bound to follow it. "Under the doctrine of *stare decisis*, all tribunals exercising inferior jurisdiction are required to follow decisions of courts exercising superior jurisdiction. Otherwise, the doctrine of *stare decisis* makes no sense. The decisions of . . . [the California Supreme Court] are binding upon and must be followed by all the state courts of

California. . . . Courts exercising inferior jurisdiction must accept the law declared by courts of superior jurisdiction. It is not their function to attempt to overrule decisions of a higher court. [Citations.]" (*Auto Equity Sales, Inc. v. Superior Court* (1962) 57 Cal.2d 450, 455.)

Since the federal speedy trial right did not attach upon the filing of the criminal complaint, it is not reasonably likely that a different result would have occurred had counsel asserted the federal right as a basis for dismissal. Accordingly, appellant's claim of ineffective assistance is without merit.

Disposition

The judgment is affirmed.

Elia, J.

WE CONCUR:

Premo, Acting P.J.

Mihara, J.